

Internal Revenue Service

Department of the Treasury

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1443.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:Br2-PLR-128544-02

Date:

May 24, 2002

TY:

Legend

Law Firm =

Country A =

Client =

Lawyer =

U.S. City A =

U.S. City B =

Dear :

This replies to your letter on behalf of Law Firm, dated May 17, 2002, in which you requested a ruling on the proper treatment of attorney's fees paid to a nonresident alien attorney for legal work he performed related to litigation pending and concluded in the United States, under sections 1441, 1442, and 1443 of the Internal Revenue Code.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Law Firm was retained by Client to assist it in recovering money due and owing to it by a United States entity. Law Firm entered into a contingency fee agreement with Client pursuant to which Law Firm provided legal services to the Client in litigation filed in the United States.

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Client was referred to Law Firm by Lawyer, a nonresident alien individual from Country A. Law Firm entered into a referral agreement with Lawyer pursuant to which Lawyer was to receive 25% of the contingency fee to be paid by the Client upon successful completion of the United States based litigation.

As consideration for 25% of the contingency fee, Lawyer agreed to contact legal experts in Country A and to write an opinion concerning applicable law of Country A. In addition, Lawyer agreed "to assist [Law Firm] in the prosecution of the action. This includes travel (and related expenses) to [U.S. City A] and/or [U.S. City B] as necessary to assist [Law Firm] with the development of the case."

Lawyer performed the following legal services in County A: (1) coordinated preparation of witness statements and declarations by expert and fact witnesses; (2) prepared legal opinions; (3) gathered documents and other matters; and, (4) handled all Client communications. Lawyer also traveled to the United States as a representative of Client to observe hearings and to attend settlement discussions. On one of those occasions, Lawyer provided a recorded statement in the United States as an "expert witness" on Country A's law.

The United States litigation concluded successfully in 2002, and the contingency fee was paid by Client. Pursuant to his agreement with Law Firm, Lawyer is entitled to his 25% share of that fee.

Section 871(a)(1)(A) imposes a tax of 30 percent of the amount received from sources within the United States by a nonresident alien individual as certain income, including interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income.

Section 1441(a) provides the general rule that all payors must withhold on payments of certain items of income to nonresident aliens to the extent that such items constitute gross income from sources within the United States. Section 1441(b) provides that these items of income include interest, dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations and emoluments.

Section 861(a)(3) provides generally that compensation for labor or personal services performed in the United States is treated as income from sources within the United States.

Section 862(a)(3) states that compensation for labor or personal services performed without the United States shall be treated as income from sources without the United States. Accordingly, the source of payment for personal services is determined by where the services are performed.

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Section 1.861-4(a)(1) of the Income Tax Regulations provides the general rule that gross income from sources within the United States includes compensation for labor or personal services performed in the United States irrespective of the residence of the payer, the place in which the contract for service was made, or the place or time of payment, with certain exceptions not relevant in this case.

Section 1.861-4(b) of the regulations provides rules for determining source when services are performed partly within and partly without the United States. Under section 1.861-4(b)(1)(i) of the regulations, if income is derived from personal services performed partly within the United States and partly without the United States, the amount to be included in gross income is determined on the basis that reflects the most proper source of income under the facts and circumstances of the particular case. In many cases the facts and circumstances will support an apportionment on the time basis. In that case, the amount to be included in gross income will be that amount which bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the payment is made. Section 1.861-4(b)(1)(i).

Based on the facts presented and representations made by the taxpayer, we conclude that the payment of 25% of the contingency fee from Law Firm to Lawyer includes compensation for services performed within the United States. The amount of this payment to Lawyer that is compensation for services performed within the United States may be determined, under section 1.861-4(b)(1)(i) of the regulations, by multiplying the amount of such payment by the ratio of the amount of time Lawyer spent on the case in the United States to the total amount of time Lawyer spent on the case. We further conclude that Law Firm must withhold on the portion of the payment determined to be from sources within the United States.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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A copy of this letter is to be attached to any return to which it is relevant.

Sincerely,

Valerie Mark Lippe
Senior Technical Reviewer, Branch 2
Office of the Associate Chief Counsel
(International)